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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Washington, D.C.

BLOOMINGDALE'S, INC.

and

Case 31-CA-071281

FATEMEH JOHNMOHAMMADI, an Individual.

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION
TO THE RESPONDENT'S MOTION TO DISMISS**

Counsel for the Acting General Counsel (AGC) opposes Respondent's Motion to Dismiss the Complaint Due to the National Labor Relations Board's Lack of a Proper Quorum. Respondent's Motion to Dismiss states that per *Noel Canning v. NLRB*, No. 12-1115, 2013 U.S.App.LEXIS 1659 (D.C. Cir. Jan. 25, 2013), four members of the National Labor Relations Board (Board) were appointed in violation of the Constitution. Given the invalidity of these appointments, under *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635 (2010), the Board lacks a valid quorum to prosecute the present complaint. In addition, the Board lacked a valid quorum when it issued *D.R. Horton*, 357 NLRB No. 184 (2012), which is the key authority on which the instant complaint is based.

The AGC submits that it is not appropriate for the Board to suspend its activities in response to a claim that Presidential appointments to the Board are not valid.

Although the Respondent correctly points out that on January 25, 2013, the D.C. Circuit

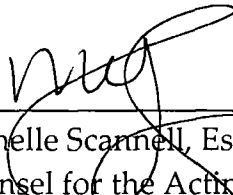
held that the President's appointments to the Board were not valid, the Board has publicly stated that it disagrees with that decision. In addition, the AGC notes that in *Noel Canning*, cited above, the D.C. Circuit Court itself noted that its conclusions concerning the Presidential appointments had been rejected by the other circuit courts to address the issues. Compare *Noel Canning v. NLRB*, Nos. 12-1115, 12-1153, 2013 WL 276024, at *14-15, 19 (D.C. Cir. Jan. 25, 2013) with *Evans v. Stephens*, 387 F.3d 1220, 1226 (11th Cir. 2004) (en banc); *United States v. Woodley*, 751 F.2d 1008, 1012-13 (9th Cir. 1985) (en banc); *United States v. Allocco*, 305 F.2d 704, 709-15 (2d Cir. 1962).

Moreover, even in the absence of a circuit conflict, it has been the Board's longstanding practice not to acquiesce in adverse decisions by individual courts of appeals in subsequent proceedings involving different parties. See Letter of Acting Solicitor, National Labor Relations Board, *Industrial Turnaround Corp. v. NLRB*, 118 F.3d 248 (4th Cir. 1997) (Nos. 96-1783 & 96-1926) (explaining that "the Board, for more than 50 years, has taken the position that it is not obliged to follow decisions of a particular court of appeals in subsequent proceedings not involving the same parties," and discussing the grounds for that position).

For these reasons, the AGC submits that the Respondent's Motion for Dismissal should be denied.

Dated at Los Angeles, California, this 11th day of March, 2013.

Respectfully submitted,



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Re: BLOOMINGDALES, INC.
Case: 31-CA-071281

CERTIFICATE OF SERVICE

I hereby certify that I served the attached **COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION TO THE RESPONDENT'S MOTION TO DISMISS** on the parties listed below on the 11th day of March, 2013:

SERVED VIA E-FILING

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